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REFERENCE TITLE: corporate tax credit; tuition organizations

State of Arizona  
House of Representatives  
Forty-seventh Legislature  
First Regular Session  
2005

## HB 2378

Introduced by  
Representatives Yarbrough, Allen J, Boone, Murphy, Nichols, Rosati, Smith,  
Senator Gould: Representatives Anderson, Barnes, Biggs, Gorman, Knaperek,  
Konopnicki, Nelson, Quelland, Reagan, Robson, Stump, Senators Gray, Harper

AN ACT

AMENDING SECTIONS 43-222 AND 43-1121, ARIZONA REVISED STATUTES; AMENDING  
TITLE 43, CHAPTER 11, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTION  
43-1182; RELATING TO CORPORATE INCOME TAX CREDITS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 43-222, Arizona Revised Statutes, is amended to  
3 read:

4 43-222. Income tax credit review schedule

5 Each year the joint legislative income tax credit review committee  
6 shall review the following income tax credits:

7 1. In 2004, sections 43-1081.01, 43-1083, 43-1084 and 43-1170.01.

8 2. In 2005, sections 43-1087, 43-1088 and 43-1175.

9 3. In 2006, sections 43-1073, 43-1089, 43-1089.01, 43-1089.02,  
10 43-1090, 43-1176 and 43-1181.

11 4. In 2007, sections 43-1077, 43-1078, 43-1079, 43-1080, 43-1165,  
12 43-1166, 43-1167 and 43-1169.

13 5. In 2008, sections 43-1074.01, 43-1081, 43-1168, 43-1170 and  
14 43-1178.

15 6. In 2009, sections 43-1076 and 43-1162.

16 7. IN 2010, SECTION 43-1182.

17 Sec. 2. Section 43-1121, Arizona Revised Statutes, is amended to read:

18 43-1121. Additions to Arizona gross income; corporations

19 In computing Arizona taxable income for a corporation, the following  
20 amounts shall be added to Arizona gross income:

21 1. The amounts computed pursuant to section 43-1021, paragraphs 3  
22 through 9, 12, 26 and 27.

23 2. The amount of dividend income received from corporations and  
24 allowed as a deduction pursuant to sections 243, 244 and 245 of the internal  
25 revenue code.

26 3. Taxes which are based on income paid to states, local governments  
27 or foreign governments and which were deducted in computing federal taxable  
28 income.

29 4. Expenses and interest relating to tax-exempt income on indebtedness  
30 incurred or continued to purchase or carry obligations the interest on which  
31 is wholly exempt from the tax imposed by this title. Financial institutions,  
32 as defined in section 6-101, shall be governed by section 43-961, paragraph  
33 2.

34 5. Commissions, rentals and other amounts paid or accrued to a  
35 domestic international sales corporation controlled by the payor corporation  
36 if the domestic international sales corporation is not required to report its  
37 taxable income to this state because its income is not derived from or  
38 attributable to sources within this state. If the domestic international  
39 sales corporation is subject to article 4 of this chapter, the department  
40 shall prescribe by rule the method of determining the portion of the  
41 commissions, rentals and other amounts which are paid or accrued to the  
42 controlled domestic international sales corporation and which shall be  
43 deducted by the payor. "Control" for purposes of this paragraph means direct  
44 or indirect ownership or control of fifty per cent or more of the voting  
45 stock of the domestic international sales corporation by the payor  
46 corporation.

6. Federal income tax refunds received during the taxable year to the extent they were deducted in arriving at Arizona taxable income in a previous year.

7. The amount of net operating loss taken pursuant to section 172 of the internal revenue code.

8. The amount of exploration expenses determined pursuant to section 617 of the internal revenue code to the extent that they exceed seventy-five thousand dollars and to the extent that the election is made to defer those expenses not in excess of seventy-five thousand dollars.

9. Amortization of costs incurred to install pollution control devices and deducted pursuant to the internal revenue code or the amount of deduction for depreciation taken pursuant to the internal revenue code on pollution control devices for which an election is made pursuant to section 43-1129.

10. The amount of depreciation or amortization of costs of child care facilities deducted pursuant to section 167 or 188 of the internal revenue code for which an election is made to amortize pursuant to section 43-1130.

11. Arizona state income tax refunds received, to the extent the amount of the refunds is not already included in Arizona gross income, if a tax benefit was derived by deduction of this amount in a prior year.

12. The amount paid as taxes on property in this state by a qualified defense contractor with respect to which a credit is claimed under section 43-1166.

13. The loss of an insurance company that is exempt under section 43-1201 to the extent that it is included in computing Arizona gross income on a consolidated return pursuant to section 43-947.

14. The amount by which the depreciation or amortization computed under the internal revenue code with respect to property for which a credit was taken under section 43-1169 exceeds the amount of depreciation or amortization computed pursuant to the internal revenue code on the Arizona adjusted basis of the property.

15. The amount by which the adjusted basis computed under the internal revenue code with respect to property for which a credit was claimed under section 43-1169 and which is sold or otherwise disposed of during the taxable year exceeds the adjusted basis of the property computed under section 43-1169.

16. The amount by which the depreciation or amortization computed under the internal revenue code with respect to property for which a credit was taken under either section 43-1170 or 43-1170.01 exceeds the amount of depreciation or amortization computed pursuant to the internal revenue code on the Arizona adjusted basis of the property.

17. The amount by which the adjusted basis computed under the internal revenue code with respect to property for which a credit was claimed under either section 43-1170 or 43-1170.01 and which is sold or otherwise disposed of during the taxable year exceeds the adjusted basis of the property computed under section 43-1170 or 43-1170.01, as applicable.

18. The deduction referred to in section 1341(a)(4) of the internal revenue code for restoration of a substantial amount held under a claim of right.

19. The amount by which a capital loss carryover allowable pursuant to section 1341(b)(5) of the internal revenue code exceeds the capital loss carryover allowable pursuant to section 43-1130.01, subsection F.

20. Any amount deducted in computing Arizona taxable income as expenses for installing solar stub outs or electric vehicle recharge outlets in this state with respect to which a credit is claimed pursuant to section 43-1176.

21. Any wage expenses deducted pursuant to the internal revenue code for which a credit is claimed under section 43-1175 and representing net increases in qualified employment positions for employment of temporary assistance for needy families recipients.

22. Any amount of expenses that were deducted pursuant to the internal revenue code and for which a credit is claimed under section 43-1178.

23. Any amount deducted for conveying ownership or development rights of property to an agricultural preservation district under section 48-5702 for which a credit is claimed under section 43-1180.

24. The amount of any deduction that is claimed in computing Arizona gross income and that represents a donation of a school site for which a credit is claimed under section 43-1181.

25. ANY AMOUNT DEDUCTED PURSUANT TO SECTION 170 OF THE INTERNAL REVENUE CODE REPRESENTING CONTRIBUTIONS TO A SCHOOL TUITION ORGANIZATION FOR WHICH A CREDIT IS CLAIMED UNDER SECTION 43-1182.

Sec. 3. Title 43, chapter 11, article 6, Arizona Revised Statutes, is amended by adding section 43-1182, to read:

43-1182. Credit for contributions to school tuition organization; definitions

A. FOR TAXABLE YEARS BEGINNING FROM AND AFTER DECEMBER 31, 2005, A CREDIT IS ALLOWED AGAINST THE TAXES IMPOSED BY THIS TITLE FOR THE AMOUNT OF VOLUNTARY CASH CONTRIBUTIONS MADE BY THE TAXPAYER DURING THE TAXABLE YEAR TO A SCHOOL TUITION ORGANIZATION.

B. THE AMOUNT OF THE CREDIT IS:

1. IF THE AMOUNT OF THE CONTRIBUTION IS LESS THAN TEN THOUSAND DOLLARS, THE AMOUNT OF THE CONTRIBUTION.

2. IF THE AMOUNT OF THE CONTRIBUTION IS TEN THOUSAND DOLLARS OR MORE, AN AMOUNT THAT IS PREAPPROVED BY THE DEPARTMENT. FOR THE PURPOSES OF THIS PARAGRAPH ONLY, THE DEPARTMENT:

(a) SHALL NOT ALLOW IN ANY CALENDAR YEAR TAX CREDITS THAT EXCEED:

(i) TEN MILLION DOLLARS FOR 2006.

(ii) FIFTEEN MILLION DOLLARS FOR 2007.

(iii) TWENTY MILLION DOLLARS FOR 2008.

(iv) TWENTY-FIVE MILLION DOLLARS FOR 2009.

(v) THIRTY MILLION DOLLARS FOR 2010.

(vi) THIRTY-FIVE MILLION DOLLARS FOR 2011.

(vii) FORTY MILLION DOLLARS FOR 2012.

1 (viii) FORTY-FIVE MILLION DOLLARS FOR 2013.

2 (ix) FIFTY MILLION DOLLARS FOR 2014.

3 (x) FROM AND AFTER DECEMBER 31, 2014, FIFTY-FIVE MILLION DOLLARS.

4 (b) SHALL REQUIRE CORPORATIONS TO RECEIVE PREAPPROVAL FROM THE  
5 DEPARTMENT BEFORE MAKING A CONTRIBUTION TO A SCHOOL TUITION ORGANIZATION.

6 (c) SHALL ALLOW THE TAX CREDITS ON A FIRST COME, FIRST SERVED BASIS.

7 C. IF THE ALLOWABLE TAX CREDIT EXCEEDS THE TAXES OTHERWISE DUE UNDER  
8 THIS TITLE ON THE CLAIMANT'S INCOME, OR IF THERE ARE NO TAXES DUE UNDER THIS  
9 TITLE, THE TAXPAYER MAY CARRY THE AMOUNT OF THE CLAIM NOT USED TO OFFSET THE  
10 TAXES UNDER THIS TITLE FORWARD FOR NOT MORE THAN FIVE CONSECUTIVE TAXABLE  
11 YEARS' INCOME TAX LIABILITY.

12 D. THE CREDIT ALLOWED BY THIS SECTION IS IN LIEU OF ANY DEDUCTION  
13 PURSUANT TO SECTION 170 OF THE INTERNAL REVENUE CODE AND TAKEN FOR STATE TAX  
14 PURPOSES.

15 E. THE TAX CREDIT IS NOT ALLOWED IF THE TAXPAYER DESIGNATES THE  
16 TAXPAYER'S CONTRIBUTION TO THE SCHOOL TUITION ORGANIZATION FOR THE DIRECT  
17 BENEFIT OF ANY SPECIFIC STUDENT.

18 F. A SCHOOL TUITION ORGANIZATION THAT RECEIVES CONTRIBUTIONS UNDER  
19 THIS SECTION SHALL USE AT LEAST NINETY PER CENT OF THOSE CONTRIBUTIONS TO  
20 PROVIDE EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS ONLY TO CHILDREN WHOSE  
21 FAMILY INCOME DOES NOT EXCEED ONE HUNDRED EIGHTY-FIVE PER CENT OF THE INCOME  
22 LIMIT REQUIRED TO QUALIFY A CHILD FOR FREE OR REDUCED PRICE LUNCHEES UNDER THE  
23 NATIONAL SCHOOL LUNCH AND CHILD NUTRITION ACTS (42 UNITED STATES CODE  
24 SECTIONS 1751 THROUGH 1785) AND WHO EITHER:

25 1. ATTENDED A GOVERNMENTAL PRIMARY OR SECONDARY SCHOOL AS A FULL-TIME  
26 STUDENT AS DEFINED IN SECTION 15-901 FOR AT LEAST THE FIRST ONE HUNDRED DAYS  
27 OF THE PRIOR FISCAL YEAR AND TRANSFERRED FROM A GOVERNMENTAL PRIMARY OR  
28 SECONDARY SCHOOL TO A QUALIFIED SCHOOL.

29 2. ENROLL IN A QUALIFIED SCHOOL IN A KINDERGARTEN PROGRAM.

30 3. RECEIVED AN EDUCATIONAL SCHOLARSHIP OR TUITION GRANT UNDER  
31 PARAGRAPH 1 OR 2 OF THIS SUBSECTION IF THE CHILDREN CONTINUE TO ATTEND A  
32 QUALIFIED SCHOOL IN A SUBSEQUENT YEAR.

33 G. IN 2006, A SCHOOL TUITION ORGANIZATION SHALL NOT ISSUE AN  
34 EDUCATIONAL SCHOLARSHIP OR A TUITION GRANT IN AN AMOUNT THAT EXCEEDS FOUR  
35 THOUSAND SEVEN HUNDRED DOLLARS. IN EACH YEAR AFTER 2006, THE LIMITATION  
36 AMOUNT FOR A SCHOLARSHIP OR A GRANT UNDER THIS SUBSECTION SHALL BE INCREASED  
37 BY ONE HUNDRED DOLLARS.

38 H. A CHILD IS STILL ELIGIBLE TO RECEIVE AN EDUCATIONAL SCHOLARSHIP OR  
39 TUITION GRANT UNDER SUBSECTION F OF THIS SECTION IF THE CHILD MEETS THE  
40 CRITERIA TO RECEIVE A FREE OR REDUCED PRICE LUNCH BUT DOES NOT ACTUALLY CLAIM  
41 THAT BENEFIT.

42 I. THE SCHOOL TUITION ORGANIZATION SHALL REQUIRE THAT THE CHILDREN USE  
43 THE EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS ON A FULL-TIME BASIS. IF A  
44 CHILD LEAVES THE QUALIFIED SCHOOL BEFORE COMPLETING AN ENTIRE SCHOOL YEAR,  
45 THE QUALIFIED SCHOOL SHALL REFUND A PRORATED AMOUNT OF THE EDUCATIONAL  
46 SCHOLARSHIP OR TUITION GRANT TO THE STUDENT TUITION ORGANIZATION THAT ISSUED

1 THE EDUCATIONAL SCHOLARSHIP OR TUITION GRANT TO THE CHILD. ANY REFUNDS  
2 RECEIVED BY THE SCHOOL TUITION ORGANIZATION UNDER THIS SUBSECTION SHALL BE  
3 ALLOCATED FOR EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS TO QUALIFIED  
4 CHILDREN IN THE FOLLOWING YEAR.

5 J. CHILDREN WHO RECEIVE EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS  
6 UNDER THIS SECTION SHALL BE ALLOWED TO ATTEND ANY QUALIFIED SCHOOL OF THEIR  
7 PARENTS' CHOICE.

8 K. A SCHOOL TUITION ORGANIZATION THAT RECEIVES A VOLUNTARY CASH  
9 CONTRIBUTION PURSUANT TO SUBSECTION A OF THIS SECTION SHALL REPORT TO THE  
10 DEPARTMENT, IN A FORM PRESCRIBED BY THE DEPARTMENT, BY FEBRUARY 28 OF EACH  
11 YEAR THE FOLLOWING INFORMATION:

12 1. THE NAME, ADDRESS AND CONTACT NAME OF THE SCHOOL TUITION  
13 ORGANIZATION.

14 2. THE TOTAL NUMBER OF CONTRIBUTIONS RECEIVED DURING THE PREVIOUS  
15 CALENDAR YEAR.

16 3. THE TOTAL DOLLAR AMOUNT OF CONTRIBUTIONS RECEIVED DURING THE  
17 PREVIOUS CALENDAR YEAR.

18 4. THE TOTAL NUMBER OF CHILDREN AWARDED EDUCATIONAL SCHOLARSHIPS OR  
19 TUITION GRANTS DURING THE PREVIOUS CALENDAR YEAR.

20 5. THE TOTAL DOLLAR AMOUNT OF EDUCATIONAL SCHOLARSHIPS AND TUITION  
21 GRANTS AWARDED DURING THE PREVIOUS CALENDAR YEAR.

22 6. FOR EACH SCHOOL TO WHICH EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS  
23 WERE AWARDED:

24 (a) THE NAME AND ADDRESS OF THE SCHOOL.

25 (b) THE NUMBER OF EDUCATIONAL SCHOLARSHIPS AND TUITION GRANTS AWARDED  
26 DURING THE PREVIOUS CALENDAR YEAR.

27 (c) THE TOTAL DOLLAR AMOUNT OF EDUCATIONAL SCHOLARSHIPS AND TUITION  
28 GRANTS AWARDED DURING THE PREVIOUS CALENDAR YEAR.

29 7. VERIFICATION THAT AN INDEPENDENT REVIEW WAS COMPLETED BY A  
30 CERTIFIED PUBLIC ACCOUNTANT FOR THE PREVIOUS CALENDAR YEAR.

31 L. THE DEPARTMENT SHALL ADOPT RULES NECESSARY FOR THE ADMINISTRATION  
32 OF THIS SECTION.

33 M. FOR THE PURPOSES OF THIS SECTION:

34 1. "QUALIFIED SCHOOL" MEANS A NONGOVERNMENTAL PRIMARY SCHOOL OR  
35 SECONDARY SCHOOL THAT IS LOCATED IN THIS STATE, THAT DOES NOT DISCRIMINATE ON  
36 THE BASIS OF RACE, COLOR, HANDICAP, FAMILIAL STATUS OR NATIONAL ORIGIN AND  
37 THAT SATISFIES THE REQUIREMENTS PRESCRIBED BY LAW FOR PRIVATE SCHOOLS IN THIS  
38 STATE ON JANUARY 1, 2005.

39 2. "SCHOOL TUITION ORGANIZATION" MEANS A CHARITABLE ORGANIZATION IN  
40 THIS STATE THAT BOTH:

41 (a) IS EXEMPT FROM FEDERAL TAXATION UNDER SECTION 501(c)(3) OF THE  
42 INTERNAL REVENUE CODE AND THAT ALLOCATES NINETY PER CENT OF ITS ANNUAL  
43 REVENUE FOR EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS TO CHILDREN TO ALLOW  
44 THEM TO ATTEND ANY QUALIFIED SCHOOL OF THEIR PARENTS' CHOICE.

45 (b) PROVIDES EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS TO STUDENTS  
46 WITHOUT LIMITING AVAILABILITY TO ONLY STUDENTS OF ONE SCHOOL.

1           Sec. 4. Purpose

2           Pursuant to section 43-223, Arizona Revised Statutes, the legislature  
3 enacts section 43-1182, Arizona Revised Statutes, as added by this act, to  
4 encourage businesses to direct a portion of their taxes by contributing to  
5 student tuition organizations in order to improve education by raising  
6 tuition scholarships for children in this state.